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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-265

JAMES W. WILLMAN,
Petitioner-Appellant,

vs.

STATE OF MINNESOTA,
Respondent-Appellee,

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

MOTION TO DISMISS

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Pursuant to Rule 16(1)(b), the Respondent, State of Minnesota, moves to dismiss the above entitled appeal from the decision of the Minnesota Supreme Court on the grounds that it does not present a substantial federal question, and that the decision rests on an adequate, independent state basis.

MINNESOTA LAW, BEFORE THE ENACTMENT OF THE ADDITIONAL, JURISDICTIONAL STATUTE IN 1975, PROHIBITED CONSPIRACIES COMMITTED WHOLLY WITHIN THE STATE.

The Appellant argues that his 1971 conspiracy to kill his wife, which took place entirely within the State of Minnesota, was not prohibited by state statute when it occurred. He argues that such conspiracies did not become illegal until 1975 when the Legislature passed a specific statute giving the courts jurisdiction over intra-state conspiracies.

The Minnesota Supreme Court has rejected this argument, ruling that intra-state conspiracies were prohibited before the 1975 enactment, and that statute was passed to clarify existing law, not to create a new offense.

Minnesota Statute 609.025, enacted in 1963, states:

"Jurisdiction of State. A person may be convicted and sentenced under the law of this state if:

(1) he commits an offense in whole or in part within this state."

* * *

This statute, combined with the State statute prohibiting conspiracies (Minn. Stat. 609.175), is sufficient to support the decision of the Minnesota Supreme Court. Contrary to the Appellant's contention, Minnesota law before the 1975 enactment prohibited intra-state conspiracies. Since independent state grounds exist to support the state court's decision on substantive law, Federal appellate review is inappropriate. *Murdock v. City of Memphis*, 20 Wall. (87 US 590), 22 LEd 429 (1875); *Wainwright v. Sykes*, —— US ——, 97 SCt 2497, 53 LEd2d 594 (1977).

The basis for appellate jurisdiction presented by the Appellant is insubstantial. He, as a result, has failed to make the showing required by Supreme Court.

In addition, the Appellant's claim of jurisdiction based on 28 U.S.C. 1257(2) is inappropriate. He does not question the validity of the state conspiracy statute, but only its claimed retroactive application to his case.

Unless the Appellant claims the statute itself is "repugnant to the Constitution, treaties, or laws of the United States . . .", he has no basis for 28 U.S.C. 1257(2) jurisdiction. *Grand Gulf R.R. Co. v. Marshall*, 53 US 165, 12 How. 165, 13 LEd 938 (1865).

The Respondent therefore requests that the appeal be dismissed, or, if treated as an application for a Writ of Certiorari, that the application be denied.

Respectfully submitted,

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